* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **RSA No.296/2005**

Mr.Manohar Lal ... Appellant
Through : Mr.Gagan Gupta, Advocate

Versus

N.D.M.C. & Others ... Respondents
Through : Nemo

CORAM :
HON'BLE MR. JUSTICE J.P. SINGH

ORDER

% 14.11.2005

This regular second appeal under section 100 of the Code of Civil Procedure is directed against the judgment & decree both dated 17.9.2005 passed by the Addl.Distt Judge Delhi in Regular Civil Appeal No.236/2000 (first Civil Appeal against the order of the Sub Judge). Vide judgment dated 25.8.1988 the learned Sub Judge had dismissed the suit of the plaintiff for grant of perpetual injunction against the respondent Council. The first appellate Court vide judgment dated 17.9.2005

Signature Not Verified
Digitally Signed By:ANULYA
Certify that the digital file and physical file have been compared and the digital data is as per the physical file and no page is missing.

dismissed the first regular Civil Appeal. Aggrieved the plaintiff has filed the present appeal.

The following "substantial questions of law" have been proposed :

A. Whether even assuming without admitting that the appellant herein could not prove his tenancy in the suit property and that he was a squatter/unauthorized occupant of the suit property, could the appellant be dispossessed/removed from the property in question without following the due process of law, especially in view of the fact that he has successfully proved that he has been in possession of the suit premises for the last more than 35 years?

B. Whether the courts below have totally misread and misinterpreted the oral and documentary evidence on record while dismissing the suit and the contempt application of the appellant herein?

C. Whether the Courts below were right in relying upon the uncorroborated statement of the landlord of the appellant to the effect that the appellant was not his tenant, totally ignoring the documentary evidence produced by the appellant such as the plaint of an earlier suit, LIC policy, passport etc., as also the oral evidence of other witnesses, which clearly prove that the appellant herein was in possession of the suit premises, since around the year 1970 and that Sh.Om Prakash the landlord of the appellant herein has failed to explain such a long possession of the appellant herein?

D. Is the party bound by the testimony of his own witness?

E. Whether the present dispute, even otherwise, is not squarely covered by the judgments of the Hon'ble Supreme Court of India in cases titled Rama Gowda (D) by L.R.s versus Mr.Varadappa Naidu (D) by L.R.s; State of Haryana & Another Versys Mohinder Pal reported as 2000(2) PLJ 170, Krishna Ram Mahale (D) by L.R.s Versus Mrs.Shobha Ram Venkat Rao reported as 12990(1) Rent Control Reporter 525 (SC) Prataprai N.Kotharti Versus John Braganza reported in 1999(2) PLJ and various others.

F. Whether the Courts below have totally ignored the contradictions in the pleadings and evidence of the respondents herein while dismissing the suit and the contempt application of the appellant herein?

G. Whether the respondents herein have not clearly admitted in their statement in the contempt proceedings that they had removed the articles of the appellant after passing of the stay order of the learned trial Court and they were thus liable to be punished for contempt of Court?

H. Whether it is not well settled proposition of law that a person who has been in long continuous possession can protect his possession by seeking injunction against any person in the world other than the true owner and that even the true owner can get back possession only by the due process of law?

I have heard Mr.Gagan Gupta Advocate learned counsel for the appellant on the point of admission and have gone through both the impugned judgments as also the record.

Briefly the facts are that the appellant (plaintiff in the trial Court-hereinafter referred to as the plaintiff) filed a suit against the respondent New Delhi Municipal Council (defendant in the trial Court-hereinafter referred to as the defendant) for grant of perpetual injunction for restraining the defendant from interfering in the business of the plaintiff and also from removing any articles from his business situated at the back portion of the property No.A-10 Connaught place New Delhi. The plaintiff averred in the plaint that he is a tenant of a portion of the premises situated on the back side of the building No. A-10, Connaught Place, New Delhi where he is running a tea stall for the last 15-16 years. The property is owned by S/Sh.Raghubir Singh & Om Prakash. In the year 1973 S/Sh.Harbans Lal Sachdev & others had filed a suit against Sh.Raghubir Singh & others including the plaintiff herein (who was defendant No.4 in the said suit) for perpetual injunction against the defendants suit restraining the defendants from using the common strip of

land which was alleged to be belonging to the plaintiffs and from carrying on the business on the said land. The said suit was dismissed.

It is pleaded in the present suit that the defendant-NDMC has no right or concern with the said property but its officers & officials keep on harassing the plaintiff for ulterior motives and interfere with his business of selling tea. They claim that the spot where he sells tea belongs to the NDMC and the health department of the defendant-NDMC can not permit the business of selling tea at the said site and that they very often remove utensils like stove, frying pan etc., of the plaintiff and are causing interference in his business.

In the written statement the defendant-NDMC has raised preliminary objections that the plaintiff had no cause of action and the suit was not maintainable because no notice under section 49 of the Punjab Municipal Act was served upon the defendant. On merits the defendant alleged that the plaintiff was not running the tea stall in any premises but was selling tea, bread-pakoras, samosas, in most unhygienic conditions, in the open area of the block-A, by keeping a table and that too without any license from the defendant and that the plaintiff was not owner of any

property therein. It is pleaded that the Inspector of the health department is competent to inspect the area and to ensure proper hygienic conditions as is the duty of the licensing authority and has every right to remove the moveable articles like the ones mentioned above, under section 173(2) of the Punjab Municipal Act. It is also stated that when the plaintiff after encroaching upon the public land sells tea in the middle of the circle behind block A, NDMC has to take action as is their duty. It is admitted that they had removed the stove frying pan, etc., on 6.7.1988 and again on 6.8.1988 in accordance with law and the said articles were released also in accordance with law after taking removal charges of Rs.75. It is re-asserted that the plaintiff was creating unhygienic conditions in the area and the items being sold are exposed to dust and flies and his business in the said manner is a health hazards to the surrounding area which results in spread of diseases like gastro entroitis, cholera, dierohea and other infectious diseases and even the Sanitary Inspector-Incharge of the area is competent to take action in accordance with law.

On the pleadings of the parties the learned Sub Judge framed the following issues :-

a) Whether the plaintiff is a tenant of the suit site and the defendant has no right to interfere in the plaintiff's business as alleged in the suit? OPP

b) Whether the suit site is municipal land and the plaintiff has no right to occupy it? OPP

It has been noted by the learned Sub Judge that PW-1 Om Prakash witness of the plaintiff did not support him and categorically stated that the plaintiff was not a tenant but may be a squatter on the back side of their property. The learned Sub Judge has observed that this evidence of the plaintiff read with the admission that the plaintiff had been challaned by the NDMC and his goods had been removed clearly show that the plaintiff has no right title or interest in the suit site and was a squatter.

I have gone through the lower court judgment. I have also read the judgment passed by the Appellate Court, which after referring to the contentions of the parties re-appraised the entire evidence on the issues framed by the trial court. He has also examined another point that the plaintiff appears to be having a sort of almirah on the wall of the property, where he may be keeping his utensils or stove, cup-plates etc., after the

work of the day is over and in fact the main business was being done on a table which is placed on a public street, and if he is selling exposed items in violence of law, then he can not complain that the same are being removed unlawfully by the NDMC and the court further opined that even the said almirah appears to have been installed on the back side of the wall of the property of some other person. The same is evidently unauthorized especially when own witness of the plaintiff has demolished his case.

I may mention here that the plaintiff had also moved an application for initiating contempt proceedings against the defendant for violation of interim injunction order dated 28.10.1988. The learned Sub Judge after going through all the facts and circumstances of the case and the evidence recorded on the contempt application dismissed the said application for initiating contempt proceedings against the officials of the NDMC because the plaintiff was running his business at two places and the officials of the NDMC had removed the articles from the other place. The appellate court has also dealt with the merits of the suit as also the contempt mater decided by the trial court and has passed a well reasoned

judgment holding that the plaintiff has no case at all.

I am told that as per the latest policy, the authorities are not giving an alternative site to the squatters/trespassers because that has started an unending vicious circle of tress-passing and squatting. The allottees of alternative plots dispose of the said plots at exhorbitrate rates and return to their old sites and restart their old trade in connivance with unscrupulous persons of the authorities. This tendancy has to be curbed.

I have gone through the above referred so-called "substantial questions of law" but the perusal of both the judgments shows that the case is merely based on the facts and false pleadings of the plaintiff. The evidence shows that the plaintiff is a rank trespasser and is engaged in spreading nuisance and creating unhygienic surroundings in the area. Both the learned Sub Judge and the learned Addl. Distt Judge have aptly dealt with the issues before them and have rightly dismissed the suit. Not even a question of law much less a substantiate question of law arises in this case. The regular Second Appeal is vexatious and frivolous and is therefore dismissed with Rs.5,000/- (Rupees Five Thousand Only) as costs to be deposited in the Delhi High Court Legal Services

Committee. A copy of this judgment be sent to the Secretary of the said Committee.

J.P. SINGH, J.

NOVEMBER 14, 2005.
nvn